IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION

CHAMBER SUMMONS NO.1132 OF 2003
IN
EXECUTION APPLICATION NO.396 OF 1998
IN
CASE NO.A/36/96-97

M/s.P.D.Agarwal & Sons .. Plaintiffs

Vs.

M/s.Vijay Saree House .. Defendant

And

Smt.Manju Krishna Murari Agarwal .. Applicant

Mr.U.S.R.Singh for the plaintiffs

Mr.R.D.Dave i/b. N.N.Vaishnava for the defendant

Shri N.J.Devashree for the applicant

CORAM: S.U. KAMDAR, J.

DATE : 7TH MARCH, 2005.

P.C. :

1. The present Chamber Summons has been taken out by the applicant who is the daughter-in-law of the original tenant, Basantidevi Gopalsahay Agarwal. It has been contended by the applicant in the present

chamber summons that she is the tenant in respect of premises being Room No.2, 2nd Floor, 98/104, Mira Bhavan, Opp.Parsee Agyari, Cavel Street, Dadiseth Agyari Lane, Mumbai 400 002. It is contended that the applicant is not the Judgment Debtor and since she is a tenant of the premises her premises cannot be attached in execution of award decree and sold. In respect of premises the learned counsel for the applicant has filed a compilation of documents containing various rent receipts.

2. I have perused the rent receipts. On the face of it, it is clear that during the life time of the original tenant Basantidevi G.Agarwal the business in the name of Vijay Saree House was being conducted by her from the said premises. In fact the rent receipt no.125 for the period 1.7.88 to 31.3.89 gives the name of Vijay Saree House as the name of the tenant along with Basantidevi Agarwal. Even in the rent receipt no.124 for the period of 1.1.88 to 31.6.88, which has been issued in favour of Basantidevi Agarwal, business tax has been imposed of sum of Rs.351.60.

3.On perusal of the rent receipts it is clear that the

business was being run in the name of Vijay Saree House during the life time of the original tenant Basantidevi Agarwal. The applicant is the daughter-in-law of the said tenant and relies upon a letter dated 30.6.98 written by Basantidevi G.Agarwal seeking to transfer the said properties in the name of the applicant herein. It has been further contended that subsequent to 1998 the applicant is paying the rent in respect of the said premises and rent receipts are relied upon in affidavit in support indicating that the said premises are in the name of applicant herein. Even in respect of the said rent receipts it is indicated that the business tax has been levied by the landlord which indicates that business of Vijay Saree House is still in operation.

4. The learned counsel has however sought to contend that the business is of her brother in law and not of the applicant being 'Vijay Saree House'. It has been contended that the applicant has nothing to do with the business of Vijay Saree House. However, it is clear that the original tenant Basantidevi Agarwal was in fact conducting the business of Vijay Saree House in the said premises and since the applicant is claiming

the title of tenancy through her she cannot contend that she has nothing to do with the business of Vijay Saree House or a decree passed against the said company. However, she contends that she is in fact conducting the business from the said premises in name and style of ’Devesh Enterprises’. I do not find any such evidence that business is conducted in the name of Devesh Enterprises. I find the business conducted is in the name of Vijay Saree House. The address in the proceedings of Vijay Saree House is also the same which is a partnership address as that of the address of the tenanted premises which is the subject matter of the present chamber summons. Furthermore, it is the case of the applicant that she is not residing at Mumbai and she is a resident of Mathura along with her handicapped husband. Thus I am unable to accept that she is running a business from the said premises in the name and style of ’Devesh Enterprises".

5. In the aforesaid circumstances, I find that no reliance can be placed on the so called claim of running business of Devesh Enterprises. I also find that even during the life time of the deceased the business in the name of Vijay Saree House had been

carried on in the said premises indicates that Basantidevi Agarwal was person concerned with the partnership firm of Vijay Saree House and therefore the decree against the firm can be executed against the said premises which were of the partnership firm through Basantidevi Agarwal.

6. The learned counsel for the applicant has relied upon the judgment of the learned single Judge of this court in the case of Aarti S. Bajaj Vs. Deepak Nichani and Shantibai Lalchand Nichani reported in 2003(Supp.)Bom C.R.764 and has interalia contended that in so far as the name of the person appears on document of title of the said premises the said property deemed to have been belonging to him and it cannot be attached for the decree passed against third party. The aforesaid judgment has no application whatsoever since the rent receipt interalia indicates the name and address of Vijay Saree House the judgment debtor itself. I find that the applicant has failed to establish that the said premises belongs to her exclusively. I am therefore not inclined to pass any order. Chamber Summons dismissed accordingly. No order as to costs. Ad interim order to continue for a

period of 4 weeks. c.c.expedited.